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Judgment for plaintiffs, and defendant brings error. Reversed, and judgment rendered.

*Peatross & Harris*, for plaintiff in error.

*Geo. T. Rison* and *Jas. L. Tredaway*, for defendants in error.

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RICHARDSON *v.* J. S. HOSKINS LUMBER CO.

Jan. 12, 1911.

[69 S. E. 935.]

**1. Attachment (§ 322\*)—Levy—Return—Requisites.**—A return on an attachment against real estate, which recites that the attachment was executed by a levy on real estate of defendant located in a designated magisterial district of a designated county, being the same land conveyed to defendant by a special commissioner of the county circuit court by deed recorded in a certain deed book on pages specified, identifies the land with sufficient certainty for purposes of sale and conveyance without the aid of extrinsic evidence, and is a substantial compliance with Code, 1904, § 2967, prescribing that the return shall describe the estate of defendant levied on.

[Ed. Note.—For other cases, see Attachment, Cent. Dig. § 1157; Dec. Dig. § 322.\*]

**2. Evidence (§ 416\*)—Parol Evidence—Description of Premises.**—Where a map, plan, survey, or deed is referred to in an instrument for the description of land, it is a part of the instrument itself, and is not extrinsic evidence.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1903; Dec. Dig. § 416.\*]

Error to Circuit Court, Mathews County.

Action by one Richardson against the J. S. Hoskins Lumber Company. There was a judgment quashing an attachment against real estate, and plaintiff brings error. Reversed.

*J. N. Stubbs* and *J. R. Saunders*, for plaintiff in error.

*J. Boyd Sears* and *Garnett & Pollard*, for defendant in error.

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DARLING'S EX'R *v.* CUMMING et al.

Jan. 12, 1911.

[69 S. E. 940.]

**Trusts (§ 316\*)—Accounting and Settlement—Commission and Allowances.**—An executor was made a trustee under a residuary clause

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of a will to hold property and allow it to increase until one of the grandchildren attained a certain age, when it was to be distributed among the grandchildren, and it was provided by the will that portions of the estate might be sold by the trustee during the trust, the expenses to include the usual commission of 5 per cent., and the will directed that in the settlement of the accounts of the executor and trustee, who was the son of testatrix, he be allowed all reasonable expenses and a commission of 5 per cent. on the gross receipts. The personal estate coming to his hands as trustee after the settlement of his accounts as executor amounted to a large sum, of which a very small part was in cash and a still smaller part in stocks; the balance being in loans and secured. Held that, in view of the provisions of the will, the executor was entitled to a commission of 5 per cent. on the gross personal estate, including the loans and securities, and that he should receive the commission provided by the will on a sale of property during the trust, and also a commission of 5 per cent. on the annual income from the trust fund.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 448-450; Dec. Dig. § 316.\*]

Appeal from Circuit Court of Elizabeth City.

Suit by Frank W. Darling, as executor and trustee under the will of Mary A. Darling, deceased, against Grace A. Cumming and others to have his compensation under the will settled. From a decree under the circuit court, the executor appeals. Decree reversed, and cause remanded.

*Jones & Woodward*, for appellant.

*S. J. Dudley* and *T. L. Sclater*, for appellees.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.